

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 19, 2003

IN RE:

PETITION OF UNITED CITIES GAS COMPANY FOR  
APPROVAL OF A FRANCHISE AGREEMENT WITH  
OBION COUNTY, TENNESSEE

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) DOCKET NO. 01-00499  
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INITIAL ORDER OF HEARING OFFICER ON THE MERITS

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This matter is before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority") for a decision on the merits with regard to the *Petition of United Cities Gas Company for Approval of a Franchise Agreement with Obion County, Tennessee* (the "Petition") filed by United Cities Gas Company ("United Cities" or the "Company").

**United Cities' Petition**

In its *Petition*, filed on June 8, 2001, United Cities requests Authority approval, pursuant to Tenn. Code Ann. § 65-4-107, of a franchise agreement contained in an Obion County, Tennessee ordinance entered by the Quarterly County Court of Obion County on September 18, 2000 and effective as of that date. As stated in United Cities' *Petition*, the ordinance grants to United Cities the nonexclusive right to provide natural gas service in Obion County for a term of fifteen (15) years. The ordinance does not impose a franchise fee. A copy of the ordinance is attached hereto as Exhibit A. No person sought intervention in this matter.

Pursuant to a public notice issued on December 10, 2002, a Hearing on the merits of United Cities' *Petition* was held on January 9, 2003. The Company was represented by the following counsel:

**Joe A. Conner, Esq.;** and **Misty Smith Kelley, Esq.;** Baker, Donelson, Bearman & Caldwell, 1800 Republic Center, 633 Chestnut Street, Chattanooga, Tennessee 37450

**Requirement of and Standards for Authority Approval**

Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that "such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest."<sup>1</sup> Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Authority "shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require . . ."<sup>2</sup>

**Pre-filed Testimony of Patricia Childers**

On January 6, 2003, United Cities filed the Direct Testimony of Patricia Childers, Vice President of Rates and Regulatory Affairs for United Cities. Ms. Childers stated that United Cities' natural gas distribution system in Obion County contains approximately 245,156 linear feet of pipe and is interconnected with and dependent upon the distribution system located within the city limits of various municipalities in Obion County, including Union City, with which United Cities also has a franchise agreement. United Cities serves approximately 600 customers in Obion County, of whom approximately ninety percent (90%) are residential and

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<sup>1</sup> Tenn. Code Ann. § 65-4-107.

<sup>2</sup> *Id.*

ten percent (10%) are commercial and industrial. The majority of the pipeline in United Cities' distribution system is located within the public rights-of-way. Ms. Childers stated that without access to these public rights-of-way, United Cities could not adequately operate, maintain, or replace its distribution system.

According to Ms. Childers, United Cities and its predecessors have operated for many years in Obion County under various franchise agreements with the County. The previous thirty (30) year agreement having expired, United Cities entered into negotiations with the County in 2000 for a new agreement. Representatives of United Cities contacted Norris Cranford, the Obion County Executive, and negotiated the terms of the new agreement with the County Commissioners of Obion County and Mr. Cranford. According to Ms. Childers, the new franchise agreement was the result of arm's-length negotiations between United Cities and Obion County.

Ms. Childers further stated:

Without this franchise, United Cities would be unable to feasibly operate, maintain, replace and/or extend the service to the customers it currently serves. In addition, there are no other feasible options for the supply of natural gas to the vast majority of the customers currently served by United Cities in Obion County. These customers depend on United Cities to supply natural gas to their homes and businesses.<sup>3</sup>

#### **Testimony at the January 9, 2003 Hearing**

At the January 9, 2003 Hearing, Ms. Childers adopted her pre-filed testimony filed on January 6, 2003 and further testified regarding the Obion County franchise agreement. Ms. Childers stated that United Cities attempted to negotiate a longer term than fifteen (15) years

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<sup>3</sup> Pre-filed Direct Testimony of Patricia Childers, January 6, 2003, p. 2.

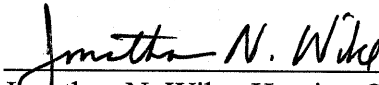
but was unable to secure a longer term. She stated that most franchise agreements negotiated at the present time are for a much shorter period.

**Findings and Conclusions**

United Cities' franchise agreement with Obion County continues a longstanding franchise arrangement in a community where United Cities has extensive operations that rely on use of the public rights-of-way. This franchise arrangement, which was undisputed, has been and continues to be of mutual benefit to United Cities, its customers, and the community. The Hearing Officer finds that this agreement is in the public interest. Accordingly, the Obion County agreement is approved pursuant to Tenn. Code Ann. § 65-4-107.

**IT IS THEREFORE ORDERED THAT:**

1. The proposed franchise agreement between United Cities Gas Company and Obion County, Tennessee is approved.
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.

  
Jonathan N. Wike, Hearing Officer

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE GRANTING TO UNITED CITIES GAS COMPANY, A DIVISION OF ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO PROVIDE THE COUNTY OF OBION, TENNESSEE, WITH NATURAL GAS SERVICE AND THE RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES ,WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE COUNTY OF OBION, TENNESSEE.**

**BE IT ORDAINED BY THE QUARTERLY COUNTY COURT OF OBION COUNTY, TENNESSEE:**

SECTION I: There is hereby granted to United Cities Gas Company, a division of Atmos Energy Corporation, a corporation organized and existing under the laws of the State of Texas and the Commonwealth of Virginia, its successors and assigns (hereinafter for convenience, individually and collectively, referred to as "Company"), the right, authority, privilege and franchise to serve the County of Obion (hereinafter for convenience referred to as "County"), and in the providing of such natural gas service to construct, maintain and operate a system of gas mains, service pipes, regulator stations and all other necessary and appropriate equipment and facilities for the distribution of gas, in, upon, under, along, across and over the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future limits of the County, for the supplying and selling of gas and its by-products to said County and the inhabitants, institutions and businesses thereof, and for such purposes to construct, lay down, maintain, and operate all necessary gas mains, service pipes and other appliances, fixtures and facilities as may be necessary for the transmission, distribution and sale of such to said County and the inhabitants thereof for domestic, commercial, industrial and

institutional uses, and other purposes for which it is or may hereafter be used, for a period of fifteen (15) years from and after the passage and approval of this Ordinance.

SECTION II: All gas mains, service pipes, fixtures, facilities and other appliances so laid, constructed and maintained by virtue of this Ordinance, shall be so laid, constructed and maintained in accordance with all applicable engineering codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable Statutes of the State of Tennessee and the Rules and Regulations of the Tennessee Regulatory Authority or of any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be constructed as not to interfere with the drainage of said County or unreasonably interfere with or injure any sewer or any other improvement which said County has heretofore made or may hereafter make in, upon or along any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground, or unnecessarily impede or obstruct such highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds of said County, and shall conform to the grade as then or hereafter established. The Company agrees to attempt to utilize known right-of-way whenever practical before resorting to right of condemnation to which the Company may be entitled to utilize by law.

SECTION III: When the streets, avenues, alleys and other public ways are opened, or any other opening is made by the Company within the County, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of the Company, the Company shall place and maintain necessary safety devices, barriers, lights and warnings to properly notify persons of any dangers resulting from such

entrances, and shall comply with applicable safety regulations required by federal, state and local laws.

SECTION IV: In the event it becomes necessary or expedient for the County to change the course or grade of any highway, street, avenue, road, alley, way, utility easement, parkway, or other public ground in which the Company is maintaining gas mains, pipes or other appliances and fixtures, then, upon the written request of the County, the Company will remove or change the location or depth of such mains, pipes or other appliances and fixtures, as necessary to conform to the proposed street alteration.

SECTION V: Whenever the Company wishes to enter upon any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground for the purpose of constructing, replacing or repairing any gas mains, pipes, or other appliances, it will if the County desires, notify the County and file a plan or map of the proposed work, if practicable, before commencing same. Whenever any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public way shall be entered, dug up or disturbed by the Company, the Company shall, at its expense and as soon as possible after the work is completed, restore such highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground in as good condition as existed before the work was done and to the reasonable satisfaction of the County. In the event the Company shall fail to fulfill its obligations under this section, the County, after giving the Company reasonable written notice, and failure of the Company to make such repairs or restoration, may make the necessary restoration or repairs itself and the Company shall be liable for the cost of same.

The provisions of this section shall not be applied or interpreted in such a way as to prevent or delay Company work that may be required as a result of any emergency, leak or other

immediate hazard or danger. Likewise, the provisions of this section anticipate that the Company shall not be unreasonably denied permission to perform necessary work.

SECTION VI: The Company shall at all times indemnify and hold harmless the County from and against any and all lawful claims for injury to any person or property by reason of the Company or its employees' failure to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavation while said systems is being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the County on account thereof, and shall have been afforded the opportunity fully to defend the same.

SECTION VII: The County and the Company hereby agree that this Ordinance shall from time to time be subject to rules and regulations adopted by the Company and approved by the Tennessee Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this Ordinance, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Regulatory Authority or any other regulatory body and that all such Rules and Regulations shall be and become a part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set out in full. The Company shall not be obligated or required to make any extension of distribution mains or service lines except in accordance with the provisions relating thereto adopted or approved by the Tennessee Regulatory Authority, or any other regulatory body having jurisdiction thereof during the term of this Ordinance.

SECTION VIII: Nothing herein contained shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service



pipes or other devices for furnishing gas services, from using any easements for gas service which are shown on any plats of any portion of said County heretofore or hereafter platted or recorded or any such easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

SECTION IX: If any section or portion of any section of this Ordinance shall hereafter be declared or determined by any court of competent authority to be invalid, the Company and the County at their election may ratify or conform the remaining portions of this Ordinance and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION X: The Company shall, within sixty (60) days after the passage of the Ordinance, file with the County Clerk or other appropriate official of the County its unconditional acceptance, signed by its President or Vice President, of the terms and conditions of this Ordinance and after filing of such acceptance, this Ordinance shall constitute a contract between the parties thereto and shall, subject to the rights and powers vested in the Tennessee Regulatory Authority or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Regulatory Authority or as may exercise statutory jurisdiction of gas companies furnishing gas service in the State of Tennessee, be the measure of the rights, powers, obligations, privileges and liabilities of said County and of said Company.

SECTION XI: All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company.

SECTION XII: This new Ordinance shall take effect and be in force immediately upon its passage by the Quarterly County Court of Obion, Tennessee and approval by the Judge of said Court.

Passed this 18 day of September, 2000.

Approved this 18 day of September, 2000.

Haris Crawford  
County Judge

Attest:

Vollie Boehms  
County Court Clerk